

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

BONFARE MARKETS, INC. dba  
BONFARE MARKET #43, et al.,

Defendants.

Case No. 1:22-cv-00605-AWI-BAM

**ORDER TO SHOW CAUSE RE  
SUPPLEMENTAL JURISDICTION**

On May 20, 2022, Plaintiff Darren Gilbert (“Plaintiff”) filed his Complaint against Defendants Bonfare Markets, Inc. dba Bonfare Market #43; Sameer Abdulwahid Nagi dba Bonfare Market #43; Sanaa A. Obaid dba Bonfare Market #43; and Stop ' N ' Save, Inc. (“Defendants”). (Doc. 1.) The Complaint asserts a claim for injunctive relief arising out of an alleged violation of the federal Americans with Disabilities Act and a claim for damages pursuant to California’s Unruh Act. (*Id.*) No defendant has appeared in this action, and default has been entered. (Docs. 8, 10, 17, 19.) On October 13, 2022, Plaintiff filed a motion for default judgment against all Defendants. (Doc. 21.)

Based upon the recent Ninth Circuit opinion in *Vo v. Choi*, the Court ORDERS Plaintiff to show cause why the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s Unruh Act claim. *See* 28 U.S.C. § 1367(c); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (holding the district court properly declined to exercise supplemental jurisdiction in a joint Unruh

1 Act and ADA case).

2 In the Unruh Act, a state law cause of action expands the remedies available in a private  
3 action. California, in response to the resulting substantial volume of claims asserted under the  
4 Unruh Act and the concern that high-frequency litigants may be using the statute to obtain  
5 monetary relief for themselves without accompanying adjustments to locations to assure  
6 accessibility to others, enacted filing restrictions designed to address that concern. *Arroyo v.*  
7 *Rosas*, 19 F.4th 1202, 1211–12 (9th Cir. 2021). These heightened pleading requirements apply to  
8 actions alleging a “construction-related accessibility claim,” which California law defines as “any  
9 civil claim in a civil action with respect to a place of public accommodation, including but not  
10 limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged  
11 violation of any construction-related accessibility standard.” Cal. Civ. Code § 55.52(a)(1).

12 Moreover, California imposes additional limitations on “high-frequency litigants,” defined  
13 as:

14 A plaintiff who has filed 10 or more complaints alleging a construction-  
15 related accessibility violation within the 12-month period immediately  
16 preceding the filing of the current complaint alleging a construction-related  
accessibility violation.

17 Cal. Civ. Proc. Code § 425.55(b)(1). The definition of “high-frequency litigant” also extends to  
18 attorneys. *See* Cal. Civ. Proc. Code § 425.55(b)(2). “High-frequency litigants” are subject to a  
19 special filing fee and further heightened pleading requirements. *See* Cal. Gov. Code § 70616.5;  
20 Cal. Civ. Proc. Code § 425.50(a)(4)(A). By enacting restrictions on the filing of construction-  
21 related accessibility claims, California has expressed a desire to limit the financial burdens  
22 California’s businesses may face for claims for statutory damages under the Unruh Act. *See*  
23 *Arroyo v. Rosas*, 19 F.4th at 1206-07, 1212. The Ninth Circuit has also expressed “concerns  
24 about comity and fairness” by permitting plaintiffs to circumvent “California’s procedural  
25 requirements.” *Vo v. Choi*, 49 F.4th at 1171. Plaintiffs who file these actions in federal court evade  
26 these limits and pursue state law damages in a manner inconsistent with the state law’s  
27 requirements. *See generally, Arroyo v. Rosas*, 19 F.4th at 1211–12; *Vo v. Choi*, 49 F.4th at 1171-  
28 72.

1 In an action over which a district court possesses original jurisdiction, that court “shall  
 2 have supplemental jurisdiction over all other claims that are so related to claims in the action  
 3 within such original jurisdiction that they form part of the same case or controversy under Article  
 4 III of the United States Constitution.” 28 U.S.C. § 1367(a). Even if supplemental jurisdiction  
 5 exists, however, district courts have discretion to decline to exercise supplemental jurisdiction. 28  
 6 U.S.C. § 1367(c). Such discretion may be exercised “[d]epending on a host of factors” including  
 7 “the circumstances of the particular case, the nature of the state law claims, the character of the  
 8 governing state law, and the relationship between the state and federal claims.” *City of Chicago v.*  
 9 *Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997).

10 According to the filings with this Court, Plaintiff Darren Gilbert appears to be a high-  
 11 frequency filer, with over 200 cases filed in this district within the last two years alone.

12 Accordingly, Plaintiff is ORDERED to show cause, in writing, **no later than January 13,**  
 13 **2023**, why the Court should not decline to exercise supplemental jurisdiction over Plaintiff’s  
 14 Unruh Act claim. In so responding, Plaintiff is further ORDERED to:

- 15 (1) identify the amount of statutory damages Plaintiff seeks to recover; and
- 16 (2) provide declarations from Plaintiff and Plaintiff’s counsel, signed under penalty of  
 17 perjury, providing all facts necessary for the Court to determine if each is a “high-frequency  
 18 litigant.”

19 Failure to respond may result in a recommendation to dismiss of the entire action without  
 20 prejudice. Fed. R. Civ. P. 41(b) (stating that dismissal is warranted “[i]f the plaintiff fails to ...  
 21 comply with ... a court order”); *see also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403  
 22 F.3d 683, 689 (9th Cir. 2005). Further, an inadequate response will result in the Court  
 23 recommending that supplemental jurisdiction over Plaintiff’s Unruh Act claim be declined and  
 24 that the Unruh claim be dismissed pursuant to 28 U.S.C. § 1367(c).

25 IT IS SO ORDERED.

26 Dated: December 27, 2022

27 /s/ Barbara A. McAuliffe  
 28 UNITED STATES MAGISTRATE JUDGE